APPENDIX A

Opinion of the District Court

IN THE

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

No. 67-362 Civ.T.

WILLIAM A. SMITH, ESTHER B. HARRIS, ESSIE M. ROBERTS, OLLIE H. PHIPPS, MILTON P. ROOKS, MARY O. BROWN, & ELOISE PERKINS,

Plaintiffs,

VS.

THE BOARD OF PUBLIC INSTRUCTION OF PINELLAS COUNTY, FLORIDA, a public body corporate; THOMAS B. SOUTHARD, SUPERINTENDENT OF PUBLIC INSTRUCTION, PINELLAS COUNTY; L. C. BROWN, JAMES E. HENDRY, H. W. HOLLAND, JOHN W. ROWE, and CORNELIUS V. FORD, as members of the Junior College Advisory Committee; and MICHAEL M. BENNETT, PRESIDENT, St. Petersburg Junior College,

Defendants.

MEMORANDUM OPINION

As the Court found in its order of December 28, 1967: during the academic year 1966-67, plaintiffs, together with others, were assigned as teachers at the Skyway Branch of the St. Petersburg Junior College in Pinellas County, Florida. This campus had previously been all Negro, Gibbs Junior College, which upon being integrated in 1962, was

made a branch of St. Petersburg Junior College and designated its Skyway Campus of the St. Petersburg Junior College. On or about March 22, 1967, defendant board closed the Skyway Campus of the St. Petersburg Junior College. Plaintiffs employment was, in some instances, either terminated or changed and they sue.

Plaintiffs allege jurisdiction and remedial rights under one or more of the following grounds:

(A) Violation of their equal right to be employed without discrimination as to race or color. Title 28 § 1343(3) U.S.C.

(B) A suit arising under the Constitution and laws of the United States with required jurisdictional amount. Title 28 § 1331 U.S.C.

(C) Injunction against enforcement of State statute alleged unconstitutional. Title 28 § 2281 U.S.C.

And

(D) Right to a declaratory judgment as to whether the conduct of defendants in discharging plaintiffs as teachers solely because of their race and color violated the Constitution and laws of the United States. Title 28 § 2201 U.S.C. and Title 42 §§ 1981 and 1983 U.S.C.

This cause was initially considered by the Court upon plaintiffs' Motion for Preliminary Injunction and Application for the convening of a statutory 3-Judge Court to contest the constitutionality of Section 231.36(2) Florida Statutes, 1965. At the hearing thereon, at which plaintiffs waived their request for a Temporary Restraining Order or Preliminary Injunction, by order dated December 28, 1967, which contains certain findings of fact, the court held

the federal challenge to the constitutionality of the Florida statute to be so unsubstantial as to negate the necessity for a statutory 3-Judge Court, for reasons given therein held the statute to be constitutional and retained jurisdiction of other issues raised in the pleadings.

After extensive discovery, plaintiffs moved for Summary Judgment in their favor. Defendants opposed and the motion was heard upon excellent memoranda and oral argument. In its Order of July 19, 1968, denying summary judgment, the court said:

"Plaintiffs contend that the steps leading to the closing of Gibbs-Skyway Junior College and its 'merger' with St. Petersburg Junior College was pursuant to a plan of desegregation previously adopted by defendant board. Defendants admit the previous adoption of a plan of desegregation affecting its entire school system and its desire and action to accomplish positive integration thereof. They contend, however, that the Gibbs-Skyway Campus was closed because of failure on the part of certain of the administrative staff of Gibbs-Skyway to fulfill their respective legal and moral responsibilities, a decline in attendance at Gibbs-Skyway and a resulting increase in the average cost of teaching a student there as compared with the other colleges.

The Court finds the closing of Gibbs-Skyway was not a direct result of desegregation as such. This leaves as the issue to be tried the question as to whether the treatment, i.e., dismissal, transfer, or failure to re-employ, as the case may be, of the respective plaintiffs was racially motivated or in some other way violative of their constitutional rights. Having found that the closing of the Gibbs-Skyway campus was not a direct result of desegregation as such, the full justification of the rule in *United States* v. *Jefferson Board*

of Education, 372, F.2d 836 (5 C. 1966), to the effect that, at 900:

> "If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system shall be evaluated in selecting the staff member to be released without consideration of race or color."

is not binding in this case.

However, since plaintiffs allege, and it is established, that each of them is a Negro and they strenuously contend that their dismissal was a result of desegregation the Court is of the opinion that the *Jefferson* rule, supra, should be among those applied in considering the treatment of each. Evaluating qualifications comparatively involves both objective and subjective considerations. The law is clear that a final summary judgment is not appropriate in such instances. The Court finds that there is a genuine issue as to the relevant facts relating to the evaluation of the qualifications of the respective plaintiffs."

In a three day trial to the Court, evidence was received and witnesses for both sides were heard. Excellent post-trial memoranda have been received and carefully noted. This Memorandum Opinion shall serve as findings and conclusions and as required by Rule 52, Federal Rules of Civil Procedure.

Plaintiffs urged that a history of racial segregation compels a shifting of the burden of proof, with regard to the relevant contested facts regarding the evaluation, from the plaintiffs to the defendants and suggest that presumptions of administrative regularity are misplaced in cases of this sort. Citing *Chambers* v. *Hendersonville City Bd. of Educ.*,

364 F.2d 189 (4 C. 1966); and *Smith* v. *Bd. of Educ. of Morrilton School Dist. #32,* 365 F.2d 770 (8 C. 1966). While the Court has held that the closing of the school was not a direct result of desegregation as such, it is clear that effects of *de jure* segregation remain in the college system and the Court will adopt the position of defendants in this regard.

Each of the plaintiffs, except Mr. Milton P. Rooks, who died prior to trial, testified, as did relevant members of the staff of the Junior College.

Prior to its closing the Skyway Campus was one of three branches of the St. Petersburg Junior College. Each campus had a Dean of Instruction; Dr. Johnnie Ruth Clarke was at Skyway, Mr. E. L. Noel, Jr. was at the St. Petersburg Campus and Dr. Phillip Frederickson was at the Clearwater Campus, all were under the direct supervision of Dr. Richard Ernst, Dean of Academic Affairs for the college. The evidence established that the principal responsibility of these four was to have a continuing knowledge of the performance of the teachers at the respective campuses and that they did so. As Dr. Ernst testified:

"We knew their particular strengths and weaknesses."

The ultimate decision with regard to each of the plaintiffs was made by these four persons after an all day conference in which they evaluated each in comparison with all others within the relevant discipline in the system.

Defendants contend that an analysis of the qualifications of each of the plaintiffs indicates that the evaluation does not comport with constitutional standards. The Court does not want to substitute its judgment for that of the school authorities, but since subjective considerations are always present when a person's work and ability are evaluated,

it is necessary to examine the specific facts relating to each of the plaintiffs:

William A. Smith: Mr. Smith taught at the Gibbs-Skyway Campus and, in addition, taught a class at the St. Petersburg Branch. Mr. Smith was observed in his capacity as a teacher by Dean E. L. Noel, Jr., Dr. Ernst and Dr. Clarke, and all three of these individuals found Mr. Smith to be an unsatisfactory teacher; he was evaluated as a poor teacher. Dean Noel testified that because of Mr. Smith's total ineffectiveness as a logic teacher, they had to replace him with another teacher. No testimony was offered by the plaintiffs to contradict this evidence, nor was any evidence offered as to Mr. Smith's capability as a teacher by any other individual. No teacher was retained in the social science field, in which Mr. Smith was certified, who had a poor evaluation. Mr. Smith was offered a position as a high school teacher and accepted same.

Esther Harris: Miss Harris was a teacher of business skills, being limited to typing and shorthand. The record showed that she was rated fair. Testimony was offered showing that she was completely evaluated with all the other teachers in her teaching field, but was found lacking because she was limited to teaching only typing and shorthand. The record shows that there were six teachers in Business Administration who were also rated fair but retained. However, the testimony offered by Dr. Richard Ernst and Dean Noel sets forth the range of teaching qualifications the teachers retained had that Miss Harris did not possess. The skills possessed by the retained teachers were as follows:

1. Delores A. Brown headed up the legal secretarial division, taught legal practice, general secretarial practice and business writing.

2. Patricia J. McAfee taught business writing.

3. Gunhilde J. Manson taught use of various business machines.

4. Douglas C. Pinkterton taught accounting, introduction to business and business law.

5. Susan W. Tener taught business machines.

6. Ophelia Walsingham taught accounting.

Esther Harris was not qualified to teach in any of the fields listed above. However, in the 1968-69 school year, a position became available in purely the typing and shorthand field, and she was offered this position and accepted same.

Essie M. Roberts: Mrs. Roberts taught at the Gibbs-Skyway Campus and the Clearwater Campus. She was personally observed by Dr. Clarke and Dr. Ernst while teaching and evaluated as poor. The Chairman of her Department in Clearwater testified he had to call her in because of complaints from her students. The Dean of Instruction, Dr. Frederickson, in addition, received numerous complaints from students not only about her teaching but of the fact she was not available for consultation. Upon looking into these complaints, he found them to be justified. In addition, Mr. Louis Harper testified that Mrs. Roberts left her class unattended and that he had to report this action to her superior. No evidence was introduced to contradict any of this testimony by defendants, nor was any witness called to testify as to Mrs. Roberts' qualifications. No teacher was retained in Mrs. Roberts' field who was evaluated as poor.

Ollie H. Phipps: Mr. Phipps wa[redacted]er instructor who had taught at the St. Petersburg Campus in addition to his job at the Gibbs-Skyway Campus. Dr. Clarke and Dr.

Ernst observed him in the classroom as a teacher and both testified that he was unsatisfactory as a teacher and evaluated him as poor. In addition, his department head at the St. Petersburg Campus found him incapable of communicating with his students and did not recommend him for re-employment. No teacher was retained with a poor evaluation and no teacher has been employed who did not have superior qualifications to those of Phipps'. No testimony was offered by the plaintiffs as to the qualifications of Mr. Phipps. All testimony offered concerning this man's qualifications was of a negative character. Mr. Phipps was offered a position in the County School system but declined same. Mr. Phipps testified that although he had applied for positions at other colleges, none would employ him.

Milton P. Rooks: Mr. Rooks taught at both the Gibbs-Skyway Campus and the Clearwater Campus. He was observed by Dr. Ernst and Dr. Clarke while teaching and evaluated as poor. He was, in addition, found unsatisfactory by the Dean of Instruction, Dr. Frederickson, at the Clearwater Campus. No evidence was offered to refute the testimony of these three individuals, nor was any evidence offered to show that a teacher less qualified was retained. No teacher in the field of social sciences with a poor evaluation was retained in the system.

The Court finds that the evaluation procedure followed was honestly and fairly conducted by qualified professionals acting in a professional way, who were not motivated or influenced by racial considerations. The procedures comport with constitutional standards and the law.

The defendants have sustained the Court imposed burden placed upon them. This cause should be dismissed with each party bearing his respective costs. Final judgment to that effect will be submitted.

DONE and ORDERED at Tampa, Florida, this 23 day of March, 1970.

BEN KRENTZMAN
BEN KRENTZMAN
United States District Judge

APPENDIX B

Opinion of Court of Appeals

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 30003

WILLIAM A. SMITH, *et al.*,

Plaintiffs-Appellants,

versus

THE BOARD OF PUBLIC INSTRUCTION OF PINELLAS COUNTY, FLORIDA, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Florida

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(March 2, 1971)

Before:

GEWIN, COLEMAN, and AINSWORTH,

Circuit Judges.

PER CURIAM: Confronted with plummeting attendance and skyrocketing costs, the Skyway Campus of the St. Petersburg Junior College was closed in 1967 and its activities were merged into the two other campuses in the system.

At closing time there were 31 black and 8 white teachers at Skyway. Nineteen of the black teachers and four of the white teachers were reassigned to the remaining campuses. This left twelve black teachers and four white teachers not reassigned within the junior college system because there were no places available. The black teachers had attained tenure status; the white teachers had not.

Seven of the twelve black teachers not immediately reassigned brought this suit. They alleged that they had been denied reassignment within the junior college system solely because of their race and in violation of the Florida teacher tenure laws.

Of the seven plaintiffs, one was offered a position as a high school teacher and accepted it, one was offered a position as an instructor in typing and shorthand and accepted it, two were offered positions in the county school system and declined, one has been re-employed as an instructor in education, one who had no master's degree and was thus ineligible to teach in the junior college system was offered a place as a program planner, but declined. Only one of the plaintiffs has not been offered employment or re-employed.[1]

After a three day trial, Judge Krentzman found as a fact that the evaluation procedure followed for the selection of teachers to be transferred to available positions on the other two campuses "was honestly and fairly conducted by qualified professionals acting in a professional way, who were not motivated or influenced by racial considerations. The procedures comport with constitutional standards and the law".

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[1] Of the four white teachers, one resigned for personal reasons, one accepted a position at another junior college, and two accepted positions in the Pinellas County School System rather than to be terminated.

The finding are abundantly supported by the record; indeed much of the evidence to that effect met with no attempted refutation. Rule 52 (a), Federal Rules of Civil Procedure, [the clearly erroneous rule] directs that such findings shall not be set aside. We cannot disregard the Rule.

Appellants contend that Judge Krentzman failed to exercise the pendent jurisdiction of the District Court to determine whether the failure to reassign teachers for whom no place was then available complied with the Florida teacher tenure law. It will be noted, however, that the trial court specifically held that the procedures comported with "constitutional standards and *the law*" (emphasis added).

Section 231.36 of the Florida Statutes provides that a teacher holding a continuing contract

> "Shall be entitled to continue in his position or in a similar position in the county at the salary schedule authorized by the county board without the necessity of annual nomination or reappointment until such time as the position is discontinued, the person resigns, or until his contractual status is changed as prescribed in (1) or (2) below."

The action of the Board in not retaining the plaintiffs was carried out pursuant to § 231.36 (2) of the Florida Statutes. This section provides:

> "Should the county board of public instruction have to choose from among its personnel who are on continuing contracts as to which should be retained, among the criteria to be considered shall be educational qualifications, efficiency, compatibility, character, and capacity to meet the educational needs of the community.

> Whenever a county board is required to or does consolidate its school program at any given school center by bringing together pupils theretofore assigned to separated schools, the county board may determine on the basis of the foregoing criteria from its own personnel, and any other certified teachers, which teachers shall be employed for service at this school center, and any teacher no longer needed may be dismissed. The decision of the board shall not be controlled by any previous contractual relationship. In the evaluation of these factors the decision of the county board of public instruction shall be final."

We are of the opinion, from this record, that the trial judge did apply the plain words and the clear intent of the quoted statutes and that he did not abdicate any duty imposed upon him by the doctrine of pendent jurisdiction.

Therefore, the judgment of the District Court is

AFFIRMED.

APPENDIX C

Section 231.36 Florida Statutes

(Teacher Tenure Act)

Contracts with members of the instructional staff and with professional administrative assistants.—Each person employed as a member of the instructional staff in any county school system or as a professional administrative or attendance assistant, supervisor or principal shall be properly certificated and shall be entitled to and shall receive a written contract as specified in chapter 230, Florida Statutes, 1941; provided, that any person so employed who shall violate the terms of his contract by leaving his position without first being released from his contract by the county board of the county in which he is employed shall be ineligible for employment in the school system of the state or any county therein for the period of one year from the date of such violation; provided, also that the county board of each county shall provide continuing contracts as prescribed herein. Effective July 1, 1951, each member of the instructional and administrative staff in each county school system, except in counties operating under local, special or general tenure laws with stated population application, who holds a regular certificate based at least on graduation from a standard four year college, who has completed three years of service in a county of the State and who has been reappointed in such county for the fourth successive year, shall be entitled to and shall be issued a continuing contract in such form as may be prescribed by regulations of the state board; provided, that the period of service provided herein may be extended to four years when prescribed by the county board and agreed to in writing by the employee. *Each*

Section 231.36 Florida Statutes

person to whom a continuing contract has been issued as provided herein shall be entitled to continue in his position or in a similar position in the county at the salary schedule authorized by the county board without the necessity of annual nomination or reappointment until such time as the position is discontinued, the person resigns, or until his contractual status is changed as prescribed in (1) or (2) below. (emphasis added.)

APPENDIX D

Section 231.36(2), Florida Statutes

(Exception to Teacher Tenure Statute in cases of School Consolidations)

Should the county board of public instruction have to choose from among its personnel who are on continuing contracts as to which should be retained, among the criteria to be considered shall be educational qualifications, efficiency, compatibility, character, and capacity to meet the educational needs of the community. Whenever a county board is required to or does consolidate its school program at any given school center by bringing together pupils theretofore assigned to separated schools, the county board may determine on the basis of the foregoing criteria from its own personnel, and any other certified teachers, which teachers shall be employed for service at this school center, and any teacher no longer needed may be dismissed. The decision of the board shall not be controlled by any previous contractual relationship. In the evaluation of these factors the decision of the county board of public instruction shall be final.

APPENDIX E

Judgment of the Court of Appeals

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

OCTOBER TERM 1970

No. 30003

D.C. DOCKET No. 67-362 Civ. T.

WILLIAM A. SMITH, *et al.*,

Plaintiffs-Appellants,

—v.—

THE BOARD OF PUBLIC INSTRUCTION OF PINELLAS COUNTY, FLORIDA, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Florida

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Before:

GEWIN, COLEMAN, and AINSWORTH,

Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was argued by counsel:

Judgment of the Court of Appeals

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that plaintiffs-appellants pay to defendants-appellees, the costs on appeal to be taxed by the clerk of this Court.

March 2, 1971

Issued as mandate: March 24, 1971